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IN THE

Supreme Court of the United States

OCTOBER TERM 1957

No. 946

DULIEN STEEL PRODUCTS, INC.,
Petitioner,

v.

ELBERT B. CONNELL,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

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Dulien Steel Products, Inc., prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on February 28, 1958.

CITATIONS TO OPINIONS BELOW

The opinion of the District Court (R. 13) is unreported and is printed at pages 13-20 of Transcript of Record in the Court of Appeals (No. 16753), copies of which are filed herewith. The opinion of the Court of Appeals is reported at 235 F. 2d 556 and is printed in Appendix A hereto, *infra*, p. 1a.

JURISDICTION

The judgment of the Court of Appeals was entered on February 28, 1958. (R. 201) Rehearing was denied on March 27, 1958. (R. 226) The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. The first question presented is whether federal law determines the jurisdiction of a United States District Court to grant relief from a judgment entered in a state court in an overtime compensation suit under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 20, et seq.), where enforcement of the judgment would be inequitable and shock the conscience of the Court.

If the first question is answered in the negative, the following questions are presented:

2. Whether a federal court loses jurisdiction over a claim for equitable relief, specifically recognized by state statute, because the state judicial system provides no forum for the action.

3. Whether Louisiana law precludes an action of nullity to obtain relief from a judgment after an appeal has been taken where the grounds of nullity were not discovered until after the appellate proceedings.

STATEMENT

This action was commenced in the United States District Court for the Western District of Louisiana for an injunction and equitable relief (R. 53). Jurisdiction was invoked under favor of 28 U.S.C. § 1332 and the general equity powers of the Court. (R. 53)

The verified complaint (R. 53-59) averred that respondent had hitherto obtained judgment against petitioner in the District Court for Webster Parish, La., in a suit for

overtime compensation under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 et seq. and that the amount of said judgment was grossly erroneous (aggregating $30,000 instead of $4,812, the maximum allowable under the law) and was the product of the mutual mistake of parties' counsel in computing the quantum for a stipulated judgment. After reciting the details, petitioner averred that unless enjoined, respondent would enforce his judgment, thereby obtaining an unconscionable advantage stemming from the mutual mistake of the parties.

On June 8 and 11, 1956, the District Court denied motions to dismiss and granted a temporary order restraining respondent until final decision on the motion for preliminary injunction which was set for trial July 9, 1956 (R. 100). Respondent appealed to the United States Court of Appeals for the Fifth Circuit (R. 141) which, on January 18, 1957, dismissed the appeal as premature. The decision is reported at 240 F. 2d 414.

On April 3, 1957, the District Court reversed its decisions of June 1956 and dismissed the complaint (R. 31). Petitioner appealed to the United States Court of Appeals for the Fifth Circuit (R. 32).

The Court of Appeals affirmed. The Court held that the case was governed by Louisiana law, because of the diverse citizenship of the parties, notwithstanding the prior judgment having been granted in a suit under a Federal statute to vindicate a federal right. The Court held that the comparable action in Louisiana law—an action of nullity—could not be brought in a Louisiana District Court after an appeal had been taken in the case, citing *Melancon Heirs* v. *Broussard,* 2 La. 8 (1830), and held further that an action of nullity could not have been brought in the appellate courts of Louisiana because said courts, under the Louisiana constitution, possess no original jurisdiction. Judge Cameron concurred in the result.

REASONS FOR GRANTING WRIT

I. This Court Should Settle the Unresolved Question of Which Law—Federal or State—Is Applicable to an Equitable Action in a Federal Court to Obtain Relief from a State Court Judgment Based Wholly on a Federal Right.

The first question presented—choice of law in a suit to obtain relief from a judgment adjudicating a federal right in a state court—is an important one in federal law which should be settled by this Court. The importance of the question is not limited to the Fair Labor Standards Act, which was involved in the case at bar, but extends to many other Federal statutes which create and grant rights enforceable in state courts as well as in Federal courts. This type of concurrent jurisdiction is widespread. Some other examples are: Federal Employers Liability Act, 45 U.S.C. § 56; Securities Act of 1933, as amended, 15 U.S.C. § 77 v; Naturalization Proceedings, 8 U.S.C. § 1421; Action on bond of Internal Revenue officer or employee, 26 U.S.C. § 7402(d); Interstate Commerce Commission Reparation Orders, 49 U.S.C. § 908.

The importance of the choice of law in these cases is illustrated by the case at bar. Jurisdiction to grant relief under federal law is clear. It provides a direct method of obtaining relief from judgments obtained by fraud, accident, duress or mistake (as in the case at bar). Rule 60(b) in the Federal Rules of Civil Procedure provides for relief by motion and also preserves the independent action in equity. The decision of the Fifth Circuit in *West Virginia Oil & Gas Co.* v. *Breese Lumber Co.*, 213 F. 2d 702 (5 Cir. 1954), is illustrative of the relief granted in cases governed by Federal law.

While Louisiana recognizes the independent action in equity to obtain relief from a judgment (denominated an action in nullity), the Fifth Circuit Court of Appeals held

that there is no forum in the Louisiana judicial system which can afford relief where an appeal has been taken in the prior suit. The effect of the decision is that no relief is available in Louisiana against a judgment obtained by fraud, bribery, or other inequitable conduct, if there has been an appeal, even though the grounds for relief are not discovered (as in the case at bar) until after the appellate proceedings.

Conflicting results depending upon choice of law were not intended by Congress when, in enacting the Fair Labor Standards Act, it granted concurrent jurisdiction to state and Federal courts over suits for overtime compensation. Had the suit been brought in the United States District Court, the relief sought herein could be obtained by motion under Rule 60(b) or by independent action, *West Virginia Oil & Gas Co.* v. *Breese Lumber Co.,* supra. The result should not be different because the suit was brought in the state court in Louisiana. Conflicting results in the same cause of action arising under a Federal law are surely contrary to the intention of Congress and encourage the forum shopping which this Court has roundly condemned in *Erie RR Co.* v. *Tompkins,* 304 U.S. 64 (1937) and succeeding cases. The instant case calls for the same uniformity in result which *Erie* requires in diversity of citizenship cases. In diversity cases, this Court has held that the result in a particular case should not differ because of the forum. The same reasoning must apply when a state court is adjudicating a federal right. When it does so, it is, in effect, another federal court and the result in the case should not be different than from that which would obtain were the case tried in the federal court. To allow a different result, as in the case at bar, is to contravene the intention of Congress and foster the same problems in concurrent jurisdiction which this Court intended to solve in diversity jurisdiction by the *Erie* case.

The assertion in the Court of Appeals opinion, that

> "the right of action claimed, that is the right to be relieved from paying the full amount of an allegedly

> erroneous state judgment on the grounds that its enforcement would be unconscionable and inequitable does not arise under the Constitution or a law or treaty or the United States",

disregards the federal statute which is at the core of the case. The only basis of respondent's claim is the Fair Labor Standards Act. The only legal basis for his judgment is that federal statute. The mutual mistake of fact in computing the amount of that judgment was a mistake that arose in computing the amount required by that federal statute. Thus, in a very real sense this case arose under a federal statute and as such should be governed by federal not state law.

The threshold conflict of laws question presented in the case at bar is basic to the entire system of concurrent jurisdiction. Its importance is thus far greater than the result in the instant case because its ramifications extend to all the statutes creating federal rights enforceable concurrently in state and federal courts. The resolution of this question is as important in its field as *Erie* v. *Tompkins* in the field of diversity jurisdiction.

II. If This Court Determines State Law Controlling, It Should Decide Whether a Federal Court Loses Jurisdiction Because the State Provides No Forum for a State Recognized Right.

The Court of Appeals decided that, notwithstanding the federal aspect discussed above, since the parties were of diverse citizenship, the case was governed by Louisiana law. Assuming *arguendo* that this choice of law was correct, there remains an important question of the proper effect of *Erie* v. *Tompkins,* supra. The Court of Appeals determined that the complaint stated a proper claim for relief under Louisiana law, being equivalent to the Louisiana action of nullity. (La. Code of Practice, Article 607, as construed in *Succession of Gilmore,* 157 La. 130, 102 So. 94). However, the court concluded that the holding in the *Melancon* case precluded any Louisiana trial court from juris-

diction because an appeal had been taken in the original action. The Court observed that the Louisiana appellate courts have no original jurisdiction and hence there is no forum in the Louisiana judicial system to adjudicate petitioner's claim for relief. From this the Court concludes that the federal judicial system is similarly impotent. Assuming the Court of Appeals is correct as to Louisiana law, its conclusion as to the impotence of the federal judiciary conflicts in principle with prior decisions of this Court and at least one other circuit court.

In *Guaranty Trust Co.* v. *York,* 326 U.S. 99 (1944), this Court held that where a state statute of limitations would bar relief in a state court equitable action, it should have similar effect in a federal court in a diversity of citizenship case. The opinion discusses the broad principles of *Erie* in the following language:

> "State law cannot define the remedies which a federal court must give simply because a federal court in diversity jurisdiction is available as an alternate tribunal to the State's courts. Contrariwise, a federal court may afford an equitable remedy for a substantive right recognized by a State even though a State court cannot give it." (328 U.S. at 106)

In the instant case the Court of Appeals held that the complaint set forth a claim recognized by Louisiana in its action of nullity. The court's conclusion that the federal court could not give relief because the state court could not is in direct conflict with the principle set forth in the portion of the *Guaranty Trust* opinion quoted above.

The decision of the Court of Appeals also conflicts, at least in principle, with *Griffith* v. *Bank of New York,* 147 F. 2d 899, (2 Cir. 1945) where the Second Circuit upheld jurisdiction of the District Court, in a diversity case, to set aside, ignore or enjoin enforcement of a state court judgment obtained by fraud, even though "motions to set aside a judgment for fraud are not contemplated by the relevant sections of the New York Civil Practice Act." (147 F. 2d at 904)

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for writ of certiorari should be granted.

Respectfully submitted,
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APPENDIX A

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 16,753

DULIEN STEEL PRODUCTS, INC.,
Appellant,

v.

ELBERT B. CONNELL,
Appellee

Appeal from the United States District Court for the Western District of Louisiana.

(February 28, 1958)

Before BORAH, TUTTLE, and CAMERON, Circuit Judges.

BORAH, Circuit Judge: When this case was here on a former appeal from an order of the District Court which temporarily restrained the defendant from enforcing a state court judgment "until the final decision of the Court on Plaintiff's Motion For Preliminary Injunction," we held that the order was not a temporary injunction and accordingly dismissed the appeal. Thereafter, and following further proceedings which were had in the court below, the temporary restraining order was dissolved and

the complaint was dismissed. As a result this second appeal followed.

The facts which give rise to this controversy are fully set forth in our prior opinion which is reported in 240 F. 2d 414, and for present purposes they may be summarized as follows: On May 8, 1956, plaintiff filed its complaint praying for a temporary and permanent injunction restraining defendant, upon such terms as the court may deem just, from executing or enforcing a judgment which the latter had theretofore obtained in a Louisiana state district court on the ground that the judgment was unconscionable and based upon mutual mistake of fact. Simultaneously, a motion for preliminary injunction was filed, and on the same day at an informal hearing counsel for the defendant interposed an objection to the jurisdiction of the court, following which it was agreed by and between counsel that the court would consider the question of jurisdiction upon briefs to be submitted. On May 22nd defendant filed motions to dismiss the suit on the grounds: (1) that the court lacked jurisdiction; (2) that the judgment which was affirmed by the Louisiana Supreme Court and in which certiorari was denied by the United States Supreme Court was res judicata; and (3) for failure to set forth a claim upon which relief could be granted. Thereafter, defendant answered the complaint with reservation of his rights under the previous motions. On June 8th, the court overruled the motions to dismiss for lack of jurisdiction and for failure to state a claim; referred the plea of res judicata to the merits; and set July 9th as the date for the hearing on plaintiff's motion for preliminary injunction. Prior to the hearing, and on June 11th, the court granted a temporary restraining order enjoining defendant from attempting to enforce, execute, or collect the judgment until the final decision on the motion for preliminary injunction. Whereupon the defendant moved to dissolve the order of June 11th and for summary judgment. And when

no action was taken thereon, defendant on June 23rd appealed.

In our consideration of the record on this prior appeal, we made the observation that the defendant "should have waited for another two weeks from the date on which he filed this appeal, at which time the trial court could have disposed of the question whether enforcement of the state judgment should be enjoined pending a full trial on the merits." And in this connection we stated further that it was not at all clear that the court below would actually have granted a preliminary injunction, for there "are several legal questions that might well have been passed on at such a hearing." Thereafter, and following the denial of an application for rehearing our mandate was on March 1, 1957, filed with the clerk of the District Court. However, it was not until after the defendant had applied for and obtained from the state district court an order to show cause why the judgment in controversy should not be enforced that plaintiff was moved to action by filing in the court below a second application for an order specifically restraining the defendant from proceeding further in the state court proceeding. Upon notice to the defendant plaintiff's application, together with defendant's motions to dismiss and for summary judgment, came on for hearing on April 3, 1957, at which time the court denied plaintiff's application for a restraining order; granted defendant's motions to dismiss and for summary judgment; and dissolved the temporary restraining order which had therefore been granted on June 11, 1956. Thereupon, plaintiff appealed and moved for and was granted an injunction restraining enforcement of the judgment during the pendency of the appeal.

Appellant's first and principal assignment of error is that the court erred in dismissing the action for want of jurisdiction. We do not all agree. The only possible ground of jurisdiction in the present case is diversity of

citizenship for the right of action claimed, that is the right to be relieved from paying the full amount of an allegedly erroneous state judgment on the grounds that its enforcement would be unconscionable and inequitable, does not arise under the Constitution or a law or treaty of the United States. It exists, if at all under a statute of the state, for diversity jurisdiction must follow state law and policy, and we look to local law to find the cause of action on which suit is brought.

Article 556 of the 1870 Code of Practice provides that:

> "Definitive judgments may be revised, set aside or reversed:
>
> 1. By a new trial.
> 2. By appeal.
> 3. By action of nullity.
> 4. By recission.
>
> "This last mode can only be exercised by minors, or persons who were absent when judgment was rendered against them."

With reference to the action of nullity, Article 607 of the Code of Practice provides that:

> "A definitive judgment may be annulled in all cases where it appears that it has been obtained through fraud, or other ill practices on the part of the party in whose favor it was rendered; as if he had obtained the same by bribing the judge or the witnesses, or by producing forged documents, or by denying having received the payment of a sum, the receipt of which the defendant had lost or could not find at the time, but has found since the rendering of the judgment."

In construing Article 607 the courts of Louisiana have declared that the action of nullity is not limited to the cases specified in the article but, as was stated in *Succession of Gilmore,* 157 La. 130, 102 So. 94, the courts

"will not hesitate to afford relief, against judgments, irrespective of any issue of inattention or neglect, when the circumstances under which the judgment is rendered show the deprivation of legal rights of the litigants who seeks relief and when the enforcement of the judgment would be unconscientious and inequitable. Our courts will follow the general principles of equity jurisprudence applied by the equity courts of the other states of this country in actions of this character." But in *Gilmore* there was no appeal from the judgment sought to be annulled and what the court there said with respect to the action of nullity must be considered in the light of the construction the Supreme Court has placed upon Article 608 of the Code of Practice. This article provides, in pertinent part, that the action of nullity may be demanded only "from the same court which has rendered the judgment, or from the court of appeals before which the appeal from such judgment was taken." In the landmark case of *Melancon's Heirs* v. *Broussard,* 2 La. 8, an independent action was instituted in a state district court to annul a judgment which, as here, had been passed upon on appeal by the Louisiana Supreme Court. There the plaintiff-appellee relied on Article 608 of the 1825 Code of Practice, which is identical with Article 608 of the 1870 Code, and urged that since the Supreme Court possessed no original jurisdiction,[1] judgments of that court "may be attacked on the score of nullity in the Court which rendered the judgment appealed from whether affirmed or reversed by this [Supreme] Court." In rejecting this contention the court tersely said: "This appears to us a *non sequitor.* The Legislature has not given jurisdiction to the District Court and it cannot assume it." To the same effect is *Succession of Martin* v. *Succession of Hoagatt,* 37 La. Ann. 340, wherein the Supreme Court in a vigorous and caustic opinion approved its holding in the *Melancon* case. Since

[1] See Art. IV, § 2, Louisiana Constitution of 1812.

the rendition of these decisions, the Louisiana legislature has not amended Article 608 or enacted any law which would purport to confer jurisdiction on the district courts of the state to grant such relief from a judgment rendered by a state appellate court, and Under Art. VII, §§ 10 and 29 of the Louisiana Constitution of 1921, the appellate courts have no original jurisdiction to entertain such an action. Thus, it appears that since the Supreme Court of Louisiana has authoritatively announced that the right to recover is not available in the state courts, it would contradict the presuppositions of diversity jurisdiction for a federal court in the state to grant such relief, for it is now settled law that diversity jurisdiction must follow state law and policy. *Erie Railroad* v. *Tompkins,* 304 U.S. 64; *Guaranty Trust Company* v. *York,* 326 U.S. 99. Since the cause of action was created by local law, the measure of it is to be found only in local law, and as was said in *Ragan* v. *Merchants Transfer Co.,* 337 U.S. 530, 533, "Where local law qualifies or abridges it, the federal court must follow suit. Otherwise there is a different measure of the cause of action in one court than in the other, and the principle of *Erie R. Co.* v. *Tompkins* is transgressed." In accordance with the foregoing, we hold that the action was properly dismissed, not for the reasons stated by the trial judge in his oral opinion, but for want of jurisdiction of the subject matter.

We have considered the other questions raised by appellant, but in view of our holding we shall refrain from any discussion thereof. And with respect to the point urged by appellee we shall be content to say that we find no merit in his motion to dismiss and for damages for a frivolous appeal. Accordingly, the motion to dismiss the appeal is denied and the judgment appealed from is affirmed.

AFFIRMED.

CAMERON, Circuit Judge: I concur in the result.

JUDGMENT.

Extract from the Minutes of February 28, 1958

[Caption Omitted]

This cause came on to be heard on the motion filed by appellee on September 16, 1957 to dismiss the appeal, and on the transcript of the record from the United States District Court for the Western District of Louisiana, and was argued by counsel:

On consideration whereof, It is now here ordered and adjudged by this Court that the motion to dismiss the appeal in this cause be, and the same is hereby, denied; and that the judgment of the said District Court appealed from in this cause be, and it is hereby, affirmed;

It is further ordered and adjudged that the appellant, Dulien Steel Products, Inc., be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

"CAMERON, Circuit Judge, concurs in the result."